

# Memorandum

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To: Christopher Calfee, Special Counsel  
California Resources Agency  
1017 L Street, #2223  
Sacramento, California 95814

From: John T. Andrew, P.E. *John Andrew*  
Executive Manager for Climate Change Activities  
Department of Water Resources

Subject: DWR comments on California Natural Resources Agency's "PROPOSED AMENDMENT OF REGULATIONS IMPLEMENTING THE CALIFORNIA ENVIRONMENTAL QUALITY" with regard to Greenhouse Gas Emissions (released July 2009, deadline for comments August 27, 2009)

The Department of Water Resources (DWR) commends the Governor's Office of Planning and Research for its work in preparing the *"Preliminary Draft CEQA Guideline Amendments for Greenhouse Gas Emissions"* and the California Natural Resources Agency for the proposed amendments to regulations implementing the California Environmental Quality Act as required under SB 97 (Proposed Amendments). DWR supports the Proposed Amendments which provide a positive framework for lead agencies working with this complex and evolving issue.

## DWR's role

DWR prepares environmental documents on many kinds of projects including dam safety projects such as building or repairing dams; flood control and protection projects such as levee repairs and set back levees; water supply and reliability projects such as off-stream storage reservoirs and Delta water conveyance structures; multi-purpose land management activities which incorporate flood control/protection, wildlife habitat and agriculture; and programs such as FERC relicensing of Oroville Reservoir, changes to long-term water supply contracts, and purchases of water for the State Water Project and others, including the Drought Water Bank. DWR must consider both the potential increase in greenhouse gases (GHGs) caused by a project and the potential impacts on a project now and in the future as a result of climate change.

In 2006, DWR released the report "Progress on Incorporating Climate Change into Management of California's Water Resources" which provides information on potential impacts of selected climate change scenarios to operations of the State Water Project and Central Valley Project, Delta water quality, flood management and on evapotranspiration. In May 2009, DWR updated this report in "Using Future Climate Projects to Support Water Resources Decision Making." As understanding of climate change improves, the challenge for California's water community is to develop and implement strategies that improve resiliency, reduce risk, and increase sustainability for water and flood management systems and the ecosystems upon which they depend. In October 2008, DWR released the report "Managing an Uncertain Future; Climate Change Adaptation Strategies for California's Water" which focuses discussion on the need for California's water managers to adapt to impacts of climate change and proposes ten adaptation strategies.

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DWR Comments

The Proposed Amendments discuss identification of impacts, significance of impacts, mitigation measures and/or alternatives and overriding considerations. The most difficult issue facing DWR and many others is how to determine when an increase in GHG emissions is significant. DWR agrees with the basic premise discussed in the Initial Statement of Reasons that GHG impacts are almost always cumulative and rarely if ever individual.

DWR provided comments to OPR on its Preliminary Draft Guidelines on GHG Emissions and is pleased that the Proposed Amendments addressed the following issues raised in DWR's comments:

1. **Retain discretion of Lead Agency with regard to all aspects of review.** One way of approaching a CEQA analysis for GHG emissions is to have a clearly defined quantitative measure of impacts and mitigation measures and a clearly defined quantitative significance threshold for each project. Another approach is to establish a statewide threshold as OPR has asked of the CARB or thresholds in regional or other plans. Until there is more certainty that these approaches work for all types of projects with GHG emissions, however, DWR strongly supports the approach in the Proposed Amendments. This approach preserves the underlying basis of CEQA to maintain the discretion of the Lead Agency to determine how to analyze each of these aspects and how to support its decision with substantial evidence.
2. **Retain discretion and provide flexibility for different types of projects.** In general, the Proposed Amendments appropriately focus on transportation and energy sector emissions, both important sectors to address when trying to achieve the ambitious goals of the California Global Warming Solutions Act. However, in applying approaches that will facilitate programmatic or project level analysis of these sectors, DWR suggested that the Draft CEQA Guidelines should not unreasonably constrain the ability of lead agencies to adopt analyses appropriate for a range of other projects. These projects could include plans for developing and managing water supplies, flood control and protection, habitat restoration or vegetation management; these projects might also be included in multi-objective, comprehensive, or programmatic approaches such as in Integrated Regional Water Management Plans. DWR is pleased to see that the Proposed Amendments recognize the role of lead agencies to address GHG impacts for projects that are not within the range of regional transportation or growth management plans referenced. Although the Proposed Amendments strongly reflect the view of both OPR and the Natural Resources Agency that the effects of GHG emissions resulting from individual projects are best addressed and mitigated at a programmatic level, they still maintain the lead agency discretion to address GHG emissions either in a project specific analysis or programmatically in long range development or management plans, facilities master plans, and other long-range planning documents. DWR agrees with and strongly supports this approach.

The proposed additional section 15064.4(b)(3) which refers to the use of statewide, regional or local plans in assessing significance of potential impacts, if read alone,

might be interpreted as a limiting statement. For instance, a state lead agency may rely upon a programmatic-level plan that may not necessarily be described as a statewide plan. However, the Initial Statement of Reasons says that proposed additional section 15064.4(b)(3) is intended to be read in conjunction with section 15064(h)(3), as proposed to be amended, and proposed additional section 15183.5. When all these sections are read together, they support a conclusion that maintains the discretion and flexibility of the lead agency to consider a broad range of types of plans or regulations for the reduction of GHG emissions as long as they provide specific requirements that will avoid or substantially lessen the cumulative problem within the geographic area in which the project is located and otherwise comply with the substantive and procedural requirements of the Proposed Amendments. It would be helpful to have this conclusion confirmed.

3. **Retain discretion of lead agency to determine amount of GHG emissions associated with a project.** DWR agrees with the language in proposed additional section 15064.4 that a "lead agency should make a good faith effort, based upon available information, to describe, calculate or estimate the amount" of GHG emissions associated with a project. There are currently models or methodologies that identify ways to quantitatively determine some types of impacts, such as those that are caused by construction activities or increased or decreased transportation or energy use. For other types of sources (e.g. carbon flux from land use changes), the determination of impact is not well understood. Information and methodologies for some of these impacts may be non-existent or are only beginning to be examined. Available scientific evidence may be conflicting or may vary significantly from location to location or by site-specific characteristics. An example is the conversion of land uses, such as converting an island used primarily for agricultural purposes to one used primarily as a wetland. DWR agrees and strongly supports the approach in the Proposed Amendments that it is critical to preserve the options of lead agencies to use qualitative methods and performance based standards as well as quantitative analyses to discuss limitations of qualitative methods or to identify impacts.
4. **Retain discretion of lead agency to allow long-lived projects that have large construction emissions—but very low annual emissions rates—to reasonably quantify their gross project impacts.** DWR made this point in its comments to CARB, dated November 26, 2008, on the *Preliminary Draft Staff Proposal on Recommended Approaches for Setting Interim Significance Thresholds for Greenhouse Gases under CEQA*. The proposed guidance did not clearly explain how construction emissions and other one-time or temporary emissions will be treated. For many of the projects implemented by DWR and others, for instance, construction emissions may represent the majority of emissions produced by the project. In fact, ongoing operational emissions from many of DWR's projects are minimal or at least well below the threshold of 7000 metric tons of carbon dioxide equivalent per year proposed by CARB staff. DWR suggested that CARB address this issue by considering the amortization of construction emissions over the life of the project (using a 0% discount rate). It is also important that a lead agency retain the discretion

to consider case-specific factors applicable to the many projects that are otherwise beneficial to the environment and the climate in the long-term but that will have GHG emissions in the short term (for example, during the construction phase of a solar facility or during earth moving or management of a carbon sequestration project). DWR supports the proposed addition of subdivision (b)(1) of Section 15064.4 which states that a lead agency may consider "the extent to which the project may increase or reduce greenhouse gas emissions as compared to the existing environmental setting" when considering the significance of GHG emissions on the environment. DWR agrees with and strongly supports the language in the Initial Statement of Reasons regarding this proposed additional subdivision which states that "all project components, including construction and operation, equipment and energy use, and development phases must be considered in the analysis".

5. **Retain lead agency discretion to determine appropriate mitigation.** Proposed Section 15126.4 subdivision (c) lists specific kinds of mitigation measures. They include: mitigation identified in an existing plan; project design features; offsite measures and offsets including carbon offsets, community energy conservation projects and off-site forestry projects; sequestration including forestry protocols adopted by CARB. Where a mitigation proposal cannot be verified with an existing protocol, a greater evidentiary showing may be required; and measures to be implemented on a project-by-project basis as long as they do not result in improper deferral of mitigation. DWR agrees with the decision, as discussed in the Initial Statement of Reasons, to reject a requirement for a hierarchy of mitigation (with on-site measures at the top) and a requirement that all mitigation measures be "real, permanent, quantifiable, verifiable, and enforceable." While CEQA may already require some of these characteristics, DWR agrees that ultimately the decision should be left to the discretion of lead agencies, to provide the flexibility to implement the most technologically and economically feasible measures appropriate in the context of an individual project.
6. **Retain lead agency flexibility with regard to establishing significance thresholds.** The difficulty for lead agencies with regard to establishing significance thresholds relates primarily to cumulative impacts. Given the State's goal of reducing GHG emissions to 1990 levels by the year 2020, one of the questions facing CEQA practitioners is whether it is possible for a lead agency to ever find that a project that results in increased GHG emissions has a less-than-significant cumulative impact with regard to GHG emissions. Current approaches to the issue currently describe several choices: determine that all increases are significant (zero thresholds); determine that none are significant if they fall below a certain threshold; or determine each instance on a case-by-case basis. As this area of analysis is a developing area of science and law, DWR agrees that it is important to maintain the flexibility and discretion of lead agencies to approach the issue of significance with regard to cumulative impacts.